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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FUJUN JIAO, etc.,

Case No. 03 Civ. 0165 (DF)

Plaintiff,

-against-

FIRST INTERNATIONAL TRAVEL, INC.,
SHI YA CHEN, et. al.,

Defendants.
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STATEMENT OF UNDISPUTED MATERIAL FACTS

In support to Defendant, Shi Ya Chen's ("Defendant"), summary judgment motion pursuant to Local Rule 56.1, contends that there is no genuine dispute as to the following material facts:

1. Plaintiff commenced this action alleging that Plaintiff was not given his lawful minimum wage and overtime hourly rate (Complaint, [Exhibit "A"] First Claim for Relief, paragraphs 23-25) and a similar claim under NYS Labor Law Articles 6 and 19 (the State Law Claim, Complaint, paragraphs 26-29).

2. This court has jurisdiction pursuant to 28 USC 1367(a) as to the federal claims, (Complaint, First Claim for Relief, paragraphs 23-25) and under the principles of pendent jurisdiction for the State Law Claims (Complaint, Second Claim for Relief, paragraphs 26-29).

3. At his oral deposition (Suckenic Declaration, dated May 26, 2005, Exhibit D,

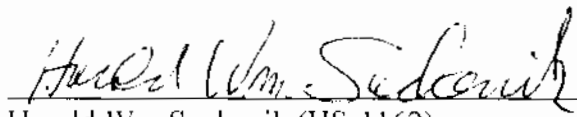
hereinafter references to the Oral Deposition transcript are given as “page/lines”), Plaintiff stated:

- (i) Plaintiff [adamantly] refused to give his social security number (12/17-13/18). He allegedly gave it to Defendant, who does not have it.
- (ii) Plaintiff had no written employment agreement (14/20-15/5).
- (iii) From May 2001 to October 2002, Plaintiff lived at the hotel at 21 East 33rd Street but paid no rent (16/18-17/11).
- (iv) All Plaintiff’s duties were performed at the hotel, the third floor of 21 East 33rd Street (*cf.*, subparagraph “x”, *infra*).
- (v) Plaintiff was paid in cash \$400.00 per week (21/18-23).
- (vi) Plaintiff was paid \$400.00 per week cash (18/19-23/3) for duties to be performed regardless of how many hours Plaintiff actually worked (23/4-23/2-17).
- (vii) Plaintiff was not paid on an hourly basis at an hourly rate (23/21-25).
- (viii) Plaintiff did not keep a record of the hours he worked. Plaintiff did keep some sort of records because he was planning to write a book (24/2-25/10).
- (ix) Plaintiff never discussed how many hours he worked with the Defendant (25/5-7).
- (x) Plaintiff performed duties at locations other than the hotel (33/22-34).
- (xi) Plaintiff was terminated for disloyalty (36/2-18).
- (xii) The hotel where Plaintiff performed his duties was on the third floor of 21 East 33rd Street and Defendant had her office on the second floor. Plaintiff saw Defendant 2-3 times per week and performed his duties without supervision to the point of handling all of the cash transactions by himself (41/2-42/13).

(xiii) Plaintiff refused to state (under oath) whether or not he reported his compensation to the IRS (and NYS) and paid taxes thereon (42/14-43/20).

(xiv) Plaintiff was not paid by the hour and would be paid his \$400.00 weekly compensation in cash, whether he worked any hours during the preceding week or not (44/2-47/11).

Dated: New York, New York
May 25th, 2005


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W&K/G/Chen, Shi Ya/First Int'l/Statement of Undisputed Material Facts/052505/18